

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9844 of 1999

with

SPECIAL CIVIL APPLICATION No 10332 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GUJARAT UNIVERSITY

Versus

MR PATEL

Appearance:

1. Special Civil Application No. 9844 of 1999
MR MITUL K SHELAT for Petitioner No. 1
MR NR SHAHANI for Respondent No. 1
MR GM JOSHI for Respondent No. 2
2. Special Civil Application No. 10332 of 1999
MR GM JOSHI for Petitioner No. 1
MR NR SHAHANI for Respondent No. 1
MR MITUL SHELAT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.0. The petitioner Gujarat University by way of this petition has challenged the order of the Gujarat Universities Services Tribunal [hereinafter referred to as "the Tribunal"] dated 31st August, 1999 in Application no. 11 of 1996, whereby the Tribunal has allowed the application with the following directions:-

"Therefore, in view of above stated position of law and discussion, the action of opponent University, appointing Opponent no.2 on the post of Head of Department by passing applicant at the relevant time, though senior to the Opponent no.2, to be appointed on the post of Head of Department, is wrong and hence requires to be quashed and set aside accordingly. The appointing memo appearing at annexure-D dated 25-10-1994, is hereby quashed. It is declared that in view of the law laid down by the Hon'ble Supreme Court and in absence of statutory provisions in the Gujarat University Act, 1949, action of the University, appointing Opponent no.2 on the post of Head of Department by passing or without considering the seniority of the applicant was illegal. It is further declared that applicant was senior as compared to opponent no.2 and was eligible to be appointed as Head of Department in History subject in the opponent University at the relevant time. As applicant has already retired w.e.f. 31-10-1997 as submitted by learned advocate Mr. D.K. Shah for applicant, who has marked his presence after the dictation of this order initiated in the open Court room today, no orders are required to be passed in favour of the applicant, but as it appears to me that opponent no.2 is wrongly appointed by opponent-University on the post of Head of Department, her appointment is quashed by this order, otherwise, it will amount to give premium to the illegal action of the University de hors to law laid down by the Hon'ble Supreme Court, which may perhaps continue with Opponent-University, if the same is not set right by the order."

2.0. Mr. Shelat learned advocate appearing for the petitioner submitted that the contentions which were raised by the University regarding limitation period and

other points were not considered by the Tribunal.

2.1. Mr. Shahani learned advocate appearing for the respondents submitted that the Merit Promotion Scheme was not in the main cadre but it existed only in the lower cadre. The fact remains that the respondent had worked for almost 13 years in the said cadre and only after the Supreme Court's decision, the application was filed and, therefore, the Tribunal ought not to have disturbed the position which was prevailing for almost 13 years. He submitted that merely because some law is pronounced by the Apex Court, at the most, the Tribunal ought to have directed the University to separate the two cadres and by directing to set aside the appointment order, the Tribunal has exceeded its jurisdiction.

3.1. Mr. Joshi learned advocate appearing for the petitioner, in Special Civil Application No. 10332 of 1999 submitted that the view taken by the Tribunal is not proper, in view of the decision of the Apex Court rendered in the case of S.A. Siddiqui v. Prof. M. Wajid Khan & Ors., reported in A.I.R. 1999 S.C. p.604 and particularly, paragraph 9, which reads as under :-

"9. The first respondent has relied upon a decision of this Court in Dr. Rashmi Srivastava v. Vikram University, (1995) 3 S.C.C. p.653 : (1995 A.I.R. S.C.W. p.2442). In that case, this Court considered the position of University teachers promoted under the Merit Promotion Scheme vis-a-vis University teachers who were directly recruited to their posts. After examining the provisions of the M.P. Vishwavidyalaya Adhiniyam, 1973, the Court said that under the said Act, the only source of appointment was a direct recruitment. Hence, direct recruits alone formed the regular cadre. The merit promotees would, therefore, falls outside the cadre under the Madhya Pradesh Adhiniyam unless the Act was amended introducing Merit Promotion as an additional source of recruitment. Ordinances and Statutes issued by the University providing for promotion as a new source of recruitment and determination of inter se seniority would be ultra vires the Act and of no effect. The provisions, however, of the Aligarh Mulsim University Act of 1920 do

not prescribe that direct recruitment is the only source of recruitment to the regular cadre of teachers in the Aligarh Muslim University. The method of recruitment or appointment is not prescribed in the Act but is left to be formulated by the Statutes of the University. The Statutes give to the Executive Council the power of appointment even otherwise than by direct recruitment. The Merit Promotion Scheme has been adopted by the Aligarh Muslim University, on the basis of the recommendations made by the Academic Council which have been accepted by the Executive Council as provided under Statute 17. The ratio, therefore, of Rashmi Srivastava's case (supra) will not apply."

4.1. I have heard the learned advocates for the respective parties. Since both the petitioner & respondent namely Ms. Ushaben G. Bhatt and Mr.M.R. Patel have by now retired, the issue raised in this petition has become academic. Apart from that, while admitting the petition, this Court [Coram : Miss R.M. Doshit, J.] vide order dated 12th January, 2000 has granted interim relief in terms of para 10 (B) and all throughout the petitioner of Special Civil Application No. 10332 of 1999 has worked as Head of the Department. Therefore, I am not examining the petition on merits.

4.2. The respondent Shri M.R. Patel of Special Civil Application no. 9844 of 1999 has approached the Tribunal almost after one and half years of the Supreme Court's decision and has challenged the maintainability of two separate cadres. The Tribunal had instead of directing the University to maintain two separate seniority list, disturbed the appointment of Ms. Bhatt as Head of the Department, without examining the fact that she was in the cadre of Reader from the year 1982, and before the decision of the Supreme Court, she was appointed as Head of the Department.

4.3. In view of the fact that both the petitioner and respondent have retired, I am not examining the judgment of the Tribunal on merits, but the fact remains that all throughout the petitioner of Special Civil Application No. 10332 of 1999 had worked as Head of the Department. Therefore, the University will treat her as retired from the post of Head of the Department.

4.4. Further, in the order of the Tribunal the question with regard to limitation period is required to be looked into inasmuch as the cause of action has arisen in the year 1982 and the decision of the Supreme Court was delivered on 20th April, 1995 in the case of Dr. Rashmi Srivastava v. Vikram University & Ors., reported in 1995 (3) S.C.C. p.653. Therefore, the Tribunal ought not to have disturbed the position which was prevailing for almost 13 years and also in view of the decision of the Apex Court in the case of Bimlesh Tanwar v. State of Haryana & Ors. reported in (2003) 5 S.C.C. 604 and more particularly Para 54 of the said decision which reads as under;

"54. Furthermore, it is now well settled that a settled seniority position should not be unsettled. The respondents had already been posted to the post of Additional District Judge. As would appear from the report of the Sub-Committee that the seniority list was published in the year 1992. Representations were, however, made only in the year 1997 which was rejected by the High Court on 22/08/97. The writ petition was filed in March 1998 which was dismissed by reason of the impugned judgment dated 18/08/99."

4.5. In the same manner, 1982 promotion was not challenged for more than 10 years. Therefore, in view of the decisions of the Supreme Court, the Tribunal ought not to have interfered.

5.1. In the result, both the petitions are allowed. The order passed by the Tribunal dated 31st August, 1999 in Application no. 11 of 1996, is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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